COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Speckling v. Communications, Energy and Paperworkers' Union of Canada, Local 76,* 2025 BCCA 24

Date: 20250129
Docket: CA49341

Between:

Walter L.M. Speckling

Appellant
(Plaintiff)

And

Local 76 of the Communications, Energy and Paperworkers' Union of Canada, Communications, Energy and Paperworkers' Union of Canada, and others yet unknown

Respondents
(Defendants)

Before: The Honourable Mr. Justice Willcock
The Honourable Madam Justice DeWitt-Van Oosten
The Honourable Justice Donegan

On appeal from: An order of the Supreme Court of British Columbia, dated August 18, 2023 (*Speckling v. Local 76 of the Communications, Energy and Paperworkers' Union of Canada*, 2023 BCSC 1446, Vancouver Docket S022782).

Walter L.M. Speckling:	B. Speckling Appearing for the Appellant
Counsel for the Respondent, Local 76 of the Communications, Energy and Paperworkers' Union of Canada:	T. Yachnin R. Dutton
Counsel for the Respondent, Communications, Energy and Paperworkers' Union of Canada:	M.D. Shirreff E.R. Janzen
Place and Date of Hearing:	Vancouver, British Columbia December 17, 2024
Place and Date of Judgment:	Vancouver, British Columbia January 29, 2025

Written Reasons by:
The Honourable Madam Justice DeWitt-Van Oosten

Concurred in by:
The Honourable Mr. Justice Willcock
The Honourable Justice Donegan

Summary:

The appellant appeals from a summary trial dismissal of his claim for breach of contract against two unions. The claim alleged that the unions failed to comply with their constitution during a disciplinary process involving the appellant. The summary trial judge found the claim had no merit. The appellant alleges judicial bias and asks that the judgment be set aside. HELD: Appeal dismissed. The appellant has not established an error of law or palpable and overriding error of fact that would allow for appellate intervention with the judgment. His allegations of bias are unfounded and deserving of rebuke. In addition to dismissing the appeal, the Court awards special costs to both respondents.

Reasons for Judgment of the Honourable Madam Justice DeWitt-Van Oosten:

Introduction

[1] The appellant, Walter Speckling, appeals from an August 18, 2023 summary trial judgment dismissing his lawsuit for breach of contract against the respondents, Local 76 of the Communications and Paperworkers' Union of Canada ("Local 76") and the Communications and Paperworkers' Union of Canada (the "National Union").

[2] The lawsuit alleged that the respondents breached the constitution of the National Union (the "Constitution"), during a disciplinary process involving the appellant in the late 1990's. At law, a union's constitution is treated as a contract: *Berry v. Pulley*, 2002 SCC 40 at paras. 5, 48–51.

[3] The appellant asks that the summary trial judgment be set aside. He also seeks various declarations, an order for damages, and special costs for the appeal and the trial. For the reasons that follow, I would dismiss the appeal and order that the appellant pay special costs to both respondents.

Background

[4] The factual context for the contract claim, including a protracted litigation history[1], was set out by the summary trial judge in reasons indexed at 2023 BCSC 1446:

1 See, for example: 2009 BCCA 258; 2007 BCCA 153; 2007 BCSC 1016; and 2006 BCSC 285.

[2] In the late 1990s, the [appellant] and his brother, Bernardus Speckling …, were working at a pulp and paper mill. A condition of working at the mill was that workers be members in good standing of Local 76 of the Communications, Energy and Paperworkers' Union of Canada (respectively "Local 76" and "National Union").

[3] During a labour dispute with the employer, Local 76 imposed a ban on working overtime with which the brothers disagreed. Bernardus Speckling worked overtime despite the ban. In response, Local 76 laid charges under the National Union's constitution ("Constitution") against him for violating the ban. Local 76's disciplinary committee found Bernardus Speckling guilty of those charges and imposed a fine. He refused to pay it. After further proceedings, including one or more grievances and applications to the Labour Relations Board, Bernardus Speckling lost his union standing and his employment.

[4] In response to the discipline against his brother, the [appellant] laid multiple charges under the Constitution against members of Local 76's executive board ("Local Executive") in 1998 and again in 1999. Only the latter are relevant to this proceeding.

[5] In September 1999, the [appellant] charged every member of the Local Executive with having misappropriated Local 76's funds in order to prosecute a grievance arbitration relating to Bernardus Speckling ("Charges"). The Local Executive responded by charging the [appellant] under provisions of the Constitution that prohibit the laying of frivolous and vexatious charges ("Counter-charge").

[6] The Charges and Counter-charge were eventually heard by Rolf Nielsen, who was delegated to do so by Fred Pomeroy, the president of the National Union ("National President"). In his decision, dated December 13, 1999 ("Nielsen Decision"), Mr. Nielsen dismissed the Charges and upheld the Counter-charge. He ordered the [appellant] to apologize to the Local Executive and acknowledge the validity of the overtime ban or, in the alternative, pay a fine of $1,000 and be suspended from Local 76 activity for six months.

…

[8] The [appellant] did not apologize and did not pay the fine. He filed an appeal of the Nielsen Decision with the National Union. Although informed that he would have to pay the fine in order to remain a member in good standing, and that he had to be a member in good standing to be able to pursue his appeal, the [appellant] did not pay the fine. As a result, the appeal did not proceed.

[9] As a further consequence of no longer being a member in good standing, the [appellant] lost his job. He filed a complaint under s. 12 of the *Labour Relations Code*, R.S.B.C. 1996, c. 244 with the Labour Relations Board ("LRB"), arguing that his employer did not have just cause to dismiss him from employment. Around the same time, Bernardus Speckling also filed a s. 12 complaint, challenging Local 76's interpretation of the collective agreement. The LRB consolidated the two complaints and heard them together.

> [10] On October 9, 2003, the LRB dismissed both complaints. The brothers pursued reconsiderations before the LRB, judicial review in this court and an appeal to the Court of Appeal, all of which were dismissed. The Supreme Court of Canada denied leave to appeal: 32023 (30 August 2007).
>
> [11] The brothers also filed civil claims. Bernardus Speckling filed a civil claim against Local 76, the National Union and several individuals in September 2002, and the [appellant] filed a similar claim in May 2003. Among other things, the [appellant] sought declaratory relief, and general, special and punitive damages for various torts and for breach of contract by Local 76 and the National Union ("2003 Claim").
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> …
>
> [13] Bernardus Speckling filed a summary trial application … with respect to his claim. Justice Gerow dismissed his application on the basis that the LRB had exclusive jurisdiction: 2005 BCSC 349. The Court of Appeal dismissed Bernardus Speckling's appeal (reported at 2006 BCCA 203), and the Supreme Court of Canada denied leave to appeal: 31530 (9 November 2006).
>
> [14] In 2006 … the [appellant] filed a new claim … that was the same in substance as the 2003 Claim ("2006 Claim"). The [appellant] then applied for summary trial of the 2006 Claim. Justice Leask dismissed the 2006 Claim as an abuse of process on the basis that the LRB had already decided the same claims (reported at 2007 BCSC 1016), relying on Gerow J.'s decision.
>
> [15] The Court of Appeal upheld the lower court's decision to strike out those parts of the [appellant's] claims that overlapped with the claims he had chosen to pursue under s. 12 of the *Labour Relations Code*. However, it decided that his contract claim, alleging that the [respondents] had breached the Constitution, fell outside the LRB's jurisdiction and remitted the matter to this court to that extent: 2009 BCCA 258 ("2009 BCCA Decision").
>
> [Emphasis added.]

[5] The remitted contract claim was the subject of the trial at issue in this appeal. The judge decided the claim had no merit and dismissed all remaining parts of the appellant's 2006 lawsuit.

Summary Trial Judgment

[6] After the contract claim returned to the Supreme Court, the appellant's notice of civil claim underwent various amendments. The last amendments were filed in November 2015, laying the foundation for the summary trial. In those amended pleadings, the appellant sought:

- a declaration that the counter-charges filed by Local 76 in September 1999 were "null and void and of no legal effect";

- a declaration that the decision finding the appellant guilty of the counter-charges (December 1999), was also "null and void and of no legal effect";

- a declaration that the disciplinary measures (or penalties) imposed on the appellant were "null and void and of no legal effect";

- a declaration that he remains a member in good standing of Local 76 and the National Union;

- a declaration that "Bulletin #2" and the "Fine Structure" were "null and void and beyond the constitutional jurisdiction" of Local 76 and the National Union;

- damages for breach of contract; and,

- costs.

[7] "Bulletin #2" was an informational bulletin issued by Local 76 in April 1997 that contained the following clauses:

> **1.**
>
> **"ARTICLE VI – HOURS OF WORK**
>
> **Section 1: Basic Work Week**
> Both parties to this Agreement are committed to maintain the principle of a basic work week of forty (40) hours, but agree that additional time may be worked to permit operation or protection of the Mill when paid for as shown in Section 2 herein."
>
> **2.**
>
> **"STATEMENTS OF POLICY, MISCELLANEOUS**
> **(c) Status of Employees Refusing to Work in Excess of 8 Hours Per Day or Scheduled Hours Per week.** (Page 91, 1949 Transcript)
>
> If an employee is requested to work in excess of eight (8) hours in any one day or in excess of his scheduled work week hours in any one week, the employee has the right to come in or not to come in

> and no penalty can be imposed by the employer for the failure of the employee to come in. It is understood, however, that the Companies are entitled to look for reasonable co-operation from their employees."
>
> The present agreement is clear, the Union has committed to maintain the principle of a basic forty (40) hour work week…
>
> …
>
> **WHERE OVERTIME IS WORKED WHEN EMPLOYEES, WHO CAN DO THE WORK OR CAN BE TRAINED TO DO THE WORK, ARE ON LAYOFF AND AVAILABLE, ANY OVERTIME WORKED IN THESE CIRCUMSTANCES IS CONTRARY TO THE COLLECTIVE AGREEMENT. THEREFORE LOCAL 76 REQUIRES IT'S MEMBERS TO REFUSE OVERTIME IN ORDER TO MEET THEIR RESPONSIBILITIES UNDER THE COLLECTIVE AGREEMENT.**
>
> **THE UNION REQUIRES THAT ALL MEMBERS OF THE C.E.P. LOCAL 76 COMPLY WITH THE COLLECTIVE AGREEMENT.**
>
> [Emphasis added.]

[8] For purposes of these reasons, Bulletin #2 will be referred to as the "Overtime Ban". The appellant filed charges against the executive members of Local 76 because he took issue with the union's enforcement of the Overtime Ban and the way it did so.

[9] The judge began her analysis of the case by explaining an earlier decision to dismiss an application by the appellant asking that she recuse herself on grounds of bias. This was the third such application: at paras. 43–53.

[10] She next turned to whether the appellant's contract claim was suitable for a summary trial. She concluded that it was: at paras. 56–57. The appellant does not take issue with this ruling on appeal.

[11] The judge then considered the appellant's submission that Local 76 could not seek orders at the trial because it had not filed its own summary trial application. Instead, the trial had proceeded on the basis of an application filed by the National Union. (The appellant also filed a summary trial application but withdrew it at the start of the hearing: at paras. 37–42.) The judge rejected the appellant's submission about Local 76, finding that the latter union's request for dismissal of the claim against it fell within the scope of the National Union's application that the 2006 action

be dismissed in its entirety: at para. 64. The appellant does not take issue with this ruling on appeal.

[12] For purposes of the summary trial, the parties agreed the appellant could properly advance a claim for breach of contract arising out of the December 1999 discipline process initiated against him for filing charges against the executive members of Local 76. However, they disagreed on whether the appellant could advance as part of that claim a challenge to the validity of the Overtime Ban under which his brother, Bernardus Speckling, had been disciplined, and argue that the Overtime Ban breached the Constitution: at para. 66.

[13] The judge decided that the appellant could not raise the latter issue in support of his claim. From her perspective, an allegation of breach of contract based on the Overtime Ban was available "only to his brother": at para. 80. The appellant had not been disciplined for violating the Overtime Ban. Instead, his claims against Local 76 and the National Union were grounded in Local 76's decision to pursue counter-charges against him in December 1999, and the disciplinary measures imposed specific to the counter-charges:

> [78] The validity of the overtime ban was central to Bernardus Speckling's s. 12 complaint to the LRB in BCLRB No. B3332003. In that decision, Vice-Chair Kearney noted that a "very substantial portion" of Bernardus Speckling's s. 12 complaint concerned the discipline imposed on him for violating the overtime ban (para. 93). She said he had raised the issue of Local 76's constitutional authority to discipline him for working overtime, but said that was a matter "of contract law for the courts" (para 93). Bernardus Speckling proceeded with his civil claims, but was unsuccessful.
>
> [79] The charge at issue in this proceeding is the Counter-charge, which alleged that the plaintiff's charges against Local 76 are frivolous and vexatious, and contrary to Art. 17.01.16 of the Constitution. As I wrote in dismissing the plaintiff's application to compel counsel for Local 76 to appear as a witness (reported at 2020 BCSC 1495):
>
> > [6] The plaintiff's conduct that was subject to Union disciplinary proceedings was his laying of charges against the members of the Local Union's executive for misappropriation of funds. The plaintiff laid those charges because he considered that the executive should not have used them to enforce the Local Union's ban on overtime work. However, the legality of the overtime ban is not before the court in this case. The plaintiff was not charged with

> violating the overtime ban. He was charged with was [*sic*] laying frivolous, vexatious and/or unfounded charges against the Local Union's executive members, contrary to Art. 17.01.16 of the CEP Constitution.
>
> [80] The plaintiff cannot assert a claim that was available only to his brother. I conclude that the plaintiff's breach of contract claim does not include the validity of the overtime ban.
>
> [Emphasis added, italics in original.]

[14] The judge next turned to the specific allegations underlying the contract claim. Based on her review of the appellant's material, she identified six alleged breaches:

> [82] From my review of the materials, it appears that the plaintiff alleges six independent breaches of the Constitution relating to the Counter-charge; three by Local 76 and three by the National Union. His claims against Local 76 are that it breached the Constitution by:
>
> a) failing to file the Counter-charge with Local 76's recording secretary;
>
> b) "forging" the signatures on the Counter-charge document; and/or
>
> c) referring the Counter-charge to the National Union.
>
> [83] His claims against the National Union are that it breached the Constitution by:
>
> a) failing to appoint an ombudsperson to adjudicate the matter and merging the Charges and Counter-charge into a single proceeding;
>
> b) imposing unauthorized penalties; and/or
>
> c) requiring the plaintiff to pay the fine as a condition of having his appeal of the Nielsen Decision heard.
>
> [Emphasis added.]

[15] To determine whether the appellant proved these breaches, it was necessary for the judge to interpret the relevant provisions of the Constitution. To that end, she instructed herself in accordance with the "usual rules of contract interpretation". This included that she was obliged to read the Constitution in the context of the document as a whole and "… the parties' mutual intent at the time of contract formation, giving the words their ordinary meaning": at para. 84.

[16] Consistent with the Supreme Court of Canada's approach to the contractual relationship between unions and their members in *Berry* (at paras. 48–51), the judge also instructed herself that when interpreting the Constitution, she was obliged to "keep in mind the labour relations context" and avoid an interpretation that would

result in an unreasonable outcome from a labour relations perspective: at paras. 84–86.

[17] Citing *Day v. The International Alliance of Theatrical Stage Employees*, 2018 ONSC 6934, the judge went on to hold that:

> [89] … from a contract perspective, a union constitution is a special type of contract that must be interpreted in light of the overarching statutory regime in which the courts have a limited role, and in a manner that promotes labour relations goals. Seen from a "voluntary association" perspective, the court must accord deference to the association's internal process and decision. Both perspectives point to procedural fairness as the appropriate standard for assessment. Neither supports a purely formalistic or literal interpretation of a union constitution's discipline process provisions. That means that it is not enough for the plaintiff to point to a formal or literal breach of the text of one or more articles of the Constitution; he must show that the breach caused procedural unfairness to him.
>
> [Emphasis added.]

[18] On appeal, the appellant does not allege that the self-instruction on the legal principles governing the interpretation of a union's constitution reflects legal error. Nor does he cite binding authority that the judge was precluded from applying a procedural fairness lens in deciding whether the appellant proved his contract claim. Indeed, the judge's emphasis on procedural fairness is consistent with the Supreme Court of Canada's affirmation in *Ethiopian Orthodox Tewahedo Church of Canada St. Mary Cathedral v. Aga*, 2021 SCC 22 at paras. 27–30, that a contract claim grounded in a union's alleged non-compliance with its internal rules of process (the focus of the claim in this case), will attract natural justice considerations.

[19] The respondents submitted at the summary trial that the appellant waited too long to raise the allegations of procedural non-compliance that underlie his contract claim and, as a result, he was deemed to have waived his right to advance those complaints. The judge agreed with that proposition and stated that she would have dismissed the 2006 action on that basis:

> [92] The evidence shows that the [appellant] was aware of the procedural breaches he alleges around the time they occurred and failed to raise them and/or to follow through with the steps available to him to pursue those complaints. Absent any explanation from him about why he chose not to do

> so, I agree that he has waived his right to object to procedural breaches and would dismiss his claim on this basis …

See also, para. 8 of the reasons for judgment.

[20] However, in the event she erred on this point, the judge proceeded to assess the contract allegations on their merits: at para. 92. For reasons provided below, the appellant has not persuaded me of reversible error in the merits-assessment. As a result, it is not necessary to address the first basis on which the judge would have dismissed the 2006 action because it was not material to the result. Accordingly, nothing said in these reasons should be interpreted as commenting on that aspect of the judge's determination, including the legal principles and reasoning she brought to bear specific to the issue of waiver.

[21] In assessing the merits, the judge started with the contractual breaches alleged against Local 76. Specific to those allegations, she reviewed the relevant provisions of the Constitution, as well as the summary trial evidence, and made the following findings:

- On September 13, 1999, the appellant filed charges against the executive of Local 76 with the latter's recording secretary (at para. 97).

- The executive selected someone to act as their advocate. On September 15, 1999, that representative wrote to the recording secretary of Local 76. He informed the recording secretary that the executive took issue with the admissibility of the appellant's allegations. He also told the recording secretary that all of the executive members who had been named as accused by the appellant had signed an "Agreement to Charge" the appellant with violations of the Constitution (at para. 98).

- That same day (September 15, 1999), the executive's representative wrote to the president of the National Union. In this letter, the representative set out the bases for the counter-charges. The letter also informed the president that Local 76 would not form a discipline committee under the Constitution.

Instead, it was referring the matter to the president for determination. The representative copied this letter to the appellant (at para. 100).

- On September 16, 1999, the recording secretary wrote to the president of the National Union and confirmed that Local 76 would not be forming a disciplinary committee to resolve either the appellant's charges against the executive or the executive's counter-charges. The appellant was also copied on this letter (at para. 102).

- Five days later, the appellant wrote to a vice-president of the National Union and said that he wanted the charges he filed to be adjudicated by an ombudsperson rather than the National Union's president, because he believed the president was in a conflict of interest (at para. 103).

[22] The charges filed by the appellant were not determined by an ombudsperson. Instead, the president of the National Union delegated the hearing of the appellant's charges and the counter-charges to a third party (Rolf Nielsen). It was Mr. Nielsen who dismissed the charges filed against the executive and upheld the counter-charges advanced by Local 76: at para. 8.

[23] The judge's findings about the processes leading up to and including the appellant's discipline for the counter-charges constitute findings of fact. On appeal, they may only be set aside if the appellant establishes palpable and overriding error: *Housen v. Nikolaissen*, 2002 SCC 33 at para. 8. A deferential standard of review applies.

[24] Based on these findings, the judge concluded that the appellant did not prove Local 76 breached the Constitution. To succeed in his claim, the appellant had to establish a breach on a balance of probabilities.

[25] First, the judge concluded that even assuming Local 76 did not "file" the counter-charges with the recording secretary (a submission made by the appellant), the failure to do so would not contravene the Constitution: at para. 107. The judge found that the provision relied upon in support of this alleged breach

(Article 17.03.04), did not apply in the exceptional circumstances that arose here, namely, charges and counter-charges that involved the members of Local 76's executive board. Because of the manner in which the dispute unfolded, the recording secretary and all other members of the executive were both charged and counter-charging parties. Given the apparent conflict of interest, the judge found it was "not possible to comply with [Article 17.03.04]": at paras. 107–108. She also noted that, in any event, the appellant did not dispute receiving notice of the counter-charges. The evidence established that "… he was aware of both sets of charges and actively participated in the processes for dealing with them": at paras. 109, 110. There was no procedural unfairness.

[26] The second alleged breach was that forgery had been committed in the counter-charging process. The appellant said that under the Constitution, the counter-charges had to be personally signed by each participating member of the executive. Instead of doing that, the executive completed one signature page and then attached that same page to both letters sent on September 15, 1999—the letter to the recording secretary attaching an "Agreement to Charge" and the letter to the president of the National Union advising that the executive was "charging" the appellant with violating Article 17.01.16 of the Constitution. At the trial, Local 76 admitted that one signature page was used for both letters: at para. 113. The appellant accepted that the original of the signature page was attached to the letter to the president, which the judge found to be the document that formally initiated the counter-charges: at paras. 111, 114. 115.

[27] The judge was of the view that a "copy of a signature page is not a forgery" and dismissed the second alleged breach: at para. 113. She found the appellant's interpretation of the relevant provisions of the Constitution to be "unreasonably formalistic": at para. 114. Article 17.03.01.02 required that all charges be signed so as to ensure that any initiating document expressed the true intention of the person(s) who laid the charges. In this case, the "Agreement to Charge" that was attached to the letter to the president of the National Union and initiated the counter-charges, had been signed: at paras. 114, 115.

[28] Specific to the third alleged breach against Local 76, the judge found no merit to the appellant's suggestion that Local 76 breached the Constitution by referring the counter-charges to the president. The Constitution contained a provision (Article 17.03.22), that expressly allowed for a referral to the president in the event the local union failed to constitute a disciplinary committee: at para. 95. That is what happened here. Local 76 "… was in a conflict of interest. If it had not referred the matter to the national level, that would have been a breach of procedural fairness": at para. 118. The fact that the counter-charges were initiated through a process ordinarily reserved for appeals (Article 17.04.01), did not render the circumstances procedurally unfair.

[29] As noted, the appellant also alleged three discrete breaches of contract against the National Union.

[30] Specific to the first breach, which focused on the failure to appoint an ombudsperson and the merging of the appellant's charges and the counter-charges for purposes of a single proceeding, the judge found no procedural unfairness. The two sets of charges were appropriately referred to the president of the National Union because they could not be resolved at the local level due to a conflict of interest: at paras. 120, 126. Moreover, the judge interpreted the Constitution to explicitly allow for the merging of charges and a determination by the president (Article 17.04.07.02), when "two charges or more [had] been laid": at para. 124. The president of the National Union also had the express authority to delegate that determination to someone else (Article 17.04.25), which is what happened in this case because the appellant alleged that the president had a conflict: at paras. 125, 126. The judge noted that the appellant participated in the hearing before the delegate and did not object to his appointment: at para. 127.

[31] For the second alleged breach, the appellant claimed that the Constitution did not authorize the disciplinary measures that emerged from the hearing of the counter-charges: at paras. 128–129. The judge disagreed. She interpreted the relevant provisions of the Constitution (Articles 17.04.20 and 17.03.16) to allow

for the penalties that were imposed: at paras. 130–133. Indeed, Article 17.03.16 included a basket phrase allowing for "… any disciplinary measure deemed just and equitable in view of all circumstances …": as set out at para. 130 of the reasons for judgment, emphasis added.

[32] Finally, as the third alleged breach, the appellant argued that the National Union had no authority to require that he pay the $1,000 fine before he could pursue an appeal of the decision finding him liable for the counter-charges. In rejecting this submission, the judge pointed to a provision of the Constitution (Article 17.02.08) stating that any decision "shall be immediately enforceable" until reversed on appeal: at para. 134. It was also apparent from her review of the relevant evidence that the appellant "… knew that he had to pay a fine to be able to have standing to appeal internally, had done so before without taking issue with the requirement, and had stated that he was prepared to pay the fine on this occasion": at para. 144, emphasis added. Ultimately, he chose to not pay and deprived himself of an appeal.

[33] After concluding that the appellant failed to prove any of the six alleged breaches, the judge dismissed his contract claim against Local 76 and the National Union: at para. 146. She awarded a lump sum $2,500 to each respondent for application costs and costs thrown away. She also awarded each of them their costs of the trial.

Issues Advanced on Appeal

[34] The appellant's factum opens with this statement:

> … The Judge refused to adhere to the Order of the BCCA and adjudicate that contract claim. She as well justified proven breaches of the contract as long as those did not cause a violation of the principles of natural justice. The LRB has exclusive jurisdiction over those principles, so she lacked jurisdiction for such determination. She as well interpreted the rules, the law and the contract in a biased and dishonest manner.
>
> [Emphasis added.]

[35] The factum proceeds to identify specific "Errors in Judgment". In this section, the appellant makes repeated assertions of procedural unfairness and judicial bias at the summary trial. He says the summary judgment reflects bias because:

- there was no legal basis for refusing to determine whether the Overtime Ban was illegal;

- the judge discriminated against the appellant by allowing Local 76 to file a sur-reply at the trial and "falsely" claimed that Local 76 had applied for leave to do so;

- she "fabricated facts and arguments not placed before her" on whether charges against the appellant had been filed with the recording secretary of Local 76;

- she "violated" s. 368(1) of the *Criminal Code*, R.S.C. 1985, c. C-46 (using a forged document), by accepting and approaching a particular exhibit as genuine;

- she "covered up" various violations of the *Criminal Code* by certain individuals who swore affidavits in the litigation as well as legal counsel for Local 76; and

- the judge erroneously declined to adjudicate whether British Columbia's Labour Relations Board is "sufficiently independent as required".

[36] In the "Argument" section of his factum, the appellant expands on the allegations of bias and asserts "corruption" by the judge. Among other things, the appellant makes these submissions:

> … She pretended her eyes and ears don't work and that she was incapable of comprehending the English language with respect to the Constitution or the arguments before her. In addition, she fabricated arguments for the Respondents they themselves did not raise.
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> …
>
> … not only did this Judge fabricate facts, fabricate terms in the Constitution, she even tried to change the Appellant's contract in claim (that no charges were filed) to a claim in fraud (that charges with forged signatures were filed in 1999) …
>
> …
>
> … [the judge] violated the *Criminal Code* … by treating [Exhibit 9] as a genuine document.

> … The date, the stamp and signatures are all forged. She committed forgery, to cover up the fact that the Respondents had committed forgery …
>
> [Emphasis in original omitted.]

[37] At the end of his factum, the appellant attributes bias to other judges who have determined issues between the parties, legal counsel for the respondents, and this Court. Ultimately, the appellant's factum makes bias the central theme of his appeal:

> The Appellant has no doubt the BCCA will cover for Madam Iyer like it covered for Madam Gerow. We are dealing with a corrupt Judge and corrupt counsel but Justice Hunter is already busy protecting this Judge. Falsely asserting that the Appellant's representative is incompetent because he took a position he found unreasonable. However, as stated in the Affidavit, it was the Appellant himself that made that decision. He also responded that any arguments that she intentionally committed errors wouldn't go anywhere. The Appellant will not argue errors when the fact is she is corrupt. It is not the job of the BCCA to handicap an honest citizen who makes meritorious arguments the Judge is corrupt to make it easier for corrupt counsel to defend her. It is the duty of the BCCA to ensure that corrupt Judges end up losing their position as a Judge.
>
> [Emphasis added.]

[38] Under the heading "Nature of Order Sought", the factum seeks the following orders:

- an order setting aside the summary trial judgment "due to bias";
- a declaration that there was no "jurisdiction" for the Overtime Ban and related "fine structure";
- a declaration that the appellant is a member in good standing of Local 76, and presumably, the National Union;
- an order for damages;
- special costs in this Court and the trial court; and
- alternatively, that the respondents be denied their trial costs.

[39] The appellant filed a reply to the respondents' factums. In the reply, he repeats his assertions of bias:

> The Appellant understands that he cannot win this appeal unless the Chief Justice assigns Justices willing to deal with the corruption in this court house … This court seem to be more geared to looking after the governments interest than looking after the citizens rights …
>
> …
>
> The Judicial system has now set the precedent that corrupt Executives with the help of corrupt counsel get to violate a member's legal rights under the Constitution, the Collective Agreement and the *Labour Relation*[*s*] *Code* [R.S.B.C. 1996, c. 244] and get away with it. The corrupt Executives just need perjure themselves before the LRB and testify that corrupt counsel advised them that the member's grievance has no merit. The idea is laughable but for the fact members that adhere to the law get their lives destroyed.
>
> …
>
> This Court has dug itself a hole by refusing to adhere to decisions of the S.C.C. The B.C.C.A. relies on the fact leave is required to apply to the S.C.C. to get away with it. In politics they say the cover-up sometimes is worse than the crime. A lot of Justices have refused to provide remedies where remedies were warranted under the law. Now you need to cover for all those Justices who treated the Appellant like disposable garbage while treating the corrupt Executives and corrupt counsel like heroes merely because they implemented an overtime policy to create jobs ignoring that the policy was illegal. This is the outside force to which [the summary trial judge] had bend rather than providing a remedy.

[40] At the hearing of the appeal, the appellant was asked whether he personally adopted the submissions made on his behalf (Bernardus Speckling appeared as his representative), and he confirmed that he did. He was also asked more than once through his representative whether he wanted to withdraw or otherwise temper his allegations of bias and corruption. He did so, but only to the extent of withdrawing allegations that the judge violated the *Criminal Code*. Assertions of bias and corruption, generally, remained front and centre in challenging the summary trial judgment.

[41] When before us, the appellant made no submissions about the "discrimination" said to have arisen from the judge's decision to allow Local 76 to file a sur-reply at the trial. Accordingly, I consider this ground of appeal to have been abandoned.

[42] At the hearing of the appeal, the appellant attempted to file two new sets of material: (a) a 23-page "Condensed Arguments Factum" that was said to reiterate arguments made in the appellant's factum; and (b) an application under Rule 78(1)(a) of the *Court of Appeal Rules,* B.C. Reg. 120/2022 [*Rules*], seeking an order disallowing any fees or disbursements to be paid to legal counsel representing Local 76.

[43] The *Rules* allow a party to submit condensed books of authorities or evidence at the hearing of an appeal (R. 37(2)), not a document that repeats, re-orders, and/or re-articulates arguments made in that party's factum. Accordingly, the appellant's representative was directed to keep to his factum when making his oral submissions.

[44] Second, it is apparent from the R. 78(1)(a) application that the request for an order specific to legal counsel for Local 76 alleges misconduct that dates as far back as 1999, when counsel for Local 76 was first retained to represent the local union in arbitration proceedings involving Bernardus Speckling. The respondents received notice of the R. 78(1)(a) application; however, they did not file material in response.

[45] We declined to accept the R. 78(1)(a) application for filing, as we were of the view it did not represent an appropriate use of this Rule. Rule 78 is intended to address conduct that caused "… costs [in the appeal] to be incurred without reasonable cause or to be wasted through delay, neglect or some other fault …". It does not allow for what the appellant has tried to do here, namely, penalize legal counsel for Local 76 by inviting the Court to engage in a wholesale review and assessment of counsel's conduct since the inception of the dispute between the parties—both in and outside of court.

[46] Finally, after the hearing of the appeal, the appellant sought to file supplemental arguments and material specific to the question of whether the judge had authority to not decide the validity of the Overtime Ban. These were arguments that could have been advanced as part of the appellant's factum and/or at the hearing of the appeal. In many respects, they were repetitive of submissions already

made. We have not granted leave to file the additional submissions and material as part of the record on appeal.

[47] Accordingly, we have not taken the "Condensed Arguments Factum", the R. 78(1)(a) application, or the appellant's supplemental material into consideration in resolving the appeal.

Respondents' Positions

[48] Each of Local 76 and the National Union filed factums in the appeal. Where necessary, I will refer to the specifics of their submissions in my analysis of the grounds of appeal. For present purposes, it is sufficient to note that in its opening statement, Local 76 says:

> … Both the issues identified and the content of the Amended Factum demonstrates the consistent position of [the appellant] and his representative is to attack the integrity and character of witnesses, counsel, Labour Relations Board Adjudicators and the courts …
>
> It is the submission of Local 76 is that the appellant's factum provides no support for the error in judgment, but the content should result in an order for special costs.

[49] The National Union takes the same position. It says the appeal:

> … is based entirely on a series of unfounded and spurious allegations against the chambers judge, a witness from Local 76, and counsel for the unions. The chambers judge properly dismissed [the appellant's] claims in contract, and his improper allegations on this appeal are deserving of special costs.

Discussion

[50] The appellant challenges the summary trial judgment based on judicial bias—both real and apparent. This is his primary ground of appeal, stating in his factum that he "will not argue errors when the fact is [the judge] is corrupt": emphasis added. The appellant says the judge did not adjudicate his contract claim with an open mind. Instead, she was consciously predisposed to decide the case in a particular way and intentionally partial.

[51] I will address the bias allegation, but also separately consider what I understand to be the main legal and factual issues underlying that allegation. The

appellant points to the judge's resolution of these issues as indicative of bias. I will then turn to the question of special costs. The respondents request special costs in the appeal.

Judicial bias

[52] It is trite law that judicial impartiality is foundational to our justice system. As reaffirmed by the Supreme Court of Canada in *Wewaykum Indian Band v. Canada*, 2003 SCC 45 at para. 57, "… public confidence in our legal system is rooted in the fundamental belief that those who adjudicate in law must always do so without bias or prejudice and must be perceived to do so".

[53] However, the law also presumes judicial impartially. This presumption "… carries considerable weight, and the law should not carelessly evoke the possibility of bias in a judge, whose authority depends upon that presumption": *Wewaykum* at para. 59. The party alleging judicial bias bears the burden of rebutting the presumption. Where the allegation, as here, is one of actual bias, the appellant must prove that the judge consciously or unconsciously heard and determined the case without an open mind, "allowing extraneous influences to affect [their] mind" or "relying on inappropriate preconceptions": *Wewaykum* at paras. 64–65.

[54] In my view, there is not a scintilla of evidence supporting the appellant's claims of actual judicial bias—conscious or unconscious. The respondents are correct. This is a wholly spurious allegation that appears solely grounded in the fact that the judge did not see the evidence or the issues raised by the case the same way the appellant did, and ruled against him.

[55] That leaves consideration of whether the appellant has shown a reasonable apprehension of bias. The test to be applied for a reasonable apprehension of bias is well-established. As explained in *Yukon Francophone School Board, Education Area #23 v. Yukon (Attorney General),* 2015 SCC 25, at para. 20, the Court must ask:

> … what would an informed person, viewing the matter realistically and practically — and having thought the matter through — conclude. Would he think that it is more likely than not that [the decision-maker], whether consciously or unconsciously, would not decide fairly …

[56] *Yukon Francophone* set out various principles that guide the reasonable apprehension analysis. First, as noted, there is a strong and not easily displaced presumption of judicial impartiality. Second, to succeed in showing a reasonable apprehension of bias, an appellant must establish "a real likelihood or probability of bias". This is a heavy burden. In deciding whether the burden has been met, a judge's impugned comments are not assessed in isolation. Rather, bias allegations must be considered in the context of the circumstances and in light of the entirety of the proceeding: at paras. 25–26. Finally, the Supreme Court of Canada reminded appellate courts in *Yukon Francophone* that there can be a fine line between robust management of a case, which is permitted, and improper interference. Consequently, a cautious approach to appellate intervention is warranted:

> [54] Appellate courts are rightfully reluctant to intervene on the grounds that a trial judge's conduct crossed the line from permissibly managing the trial to improperly interfering with the case. Reprimands of counsel, for example, may well be appropriate to ensure that proceedings occur in an orderly and efficient manner and that the court's process is not abused. But as the Canadian Judicial Council's *Ethical Principles for Judges* (1998) suggest:
>
> > Unjustified reprimands of counsel, insulting and improper remarks about litigants and witnesses, statements evidencing prejudgment and intemperate and impatient behaviour may destroy the appearance of impartiality … A fine balance is to be drawn by judges who are expected both to conduct the process effectively and avoid creating in the mind of a reasonable, fair minded and informed person any impression of a lack of impartiality …
>
> [Emphasis added to first para., emphasis in original in second para.]

[57] Applying these principles to the case at bar, I see no basis on which to find a reasonable apprehension of judicial bias. To the contrary, it is clear from her reasons, read as a whole, that the judge carefully and thoroughly considered the issues advanced by the appellant in the independent exercise of her discretion, was alive to the points raised by him, and assessed the evidence with his submissions in mind. The appellant does not agree with the judge's resolution of the live issues, her

interpretation of the Constitution, her findings of fact, or the outcome of the trial. That much is clear. However, this does not mean the judge was biased: *Pereira v. British Columbia (Labour Relations Board)*, 2023 BCCA 165 at para. 89; leave to appeal ref'd, 2023 CanLII 122403 (SCC).

[58] The appellant has not persuaded me that an informed person, viewing the summary trial realistically and practically, and having thought the matter through, would think it more likely than not that the judge, consciously or unconsciously, would not decide the case fairly. Accordingly, this ground of appeal is without merit and I would not accede to it.

Errors of law

[59] Having reached that conclusion, there are nonetheless some issues raised in the appellant's factum that I consider appropriate to resolve separate from the claim of bias. While I firmly reject the appellant's assertion that the judge's resolution of these issues is indicative of bias, I have nonetheless reviewed the issues for reversible error.

[60] The appellant has raised numerous concerns in his factum. It is not necessary to address all of them, as some consist merely of bald assertions of error, without any supporting analysis or a demonstrated nexus between those concerns and the legal or factual context of the case.

[61] For example, the appellant says the judge erred in refusing to determine whether the Labour Relations Board is "independent" (presumably within the meaning of s. 11(d) of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*). However, he offers no explanation as to how the independence of the Labour Relations Board is legally or factually relevant to his breach of contract claim. The November 2015 amended notice of civil claim does not seek a declaration to this effect, or any other form of relief specific to decisions made by the Labour Relations Board. Given that fact, it is not at all surprising that the judge did not consider or render a decision in respect of the Board's structure, appointment process, conduct, or decision-making. Those issues were not properly

before her and she was not standing in judicial review of a Board decision. To the extent the appellant may have been asserting a lack of independence as a means by which to prevent the parties and the judge from considering or relying on decisions rendered by the Board relevant to his personal circumstances, doing so constituted an impermissible collateral attack.

[62] I also note that the appellant has previously appeared before this Court specific to decisions of the Labour Relations Board. In *Speckling v. British Columbia (Labour Relations Board)*, 2007 BCCA 153, he appealed an order dismissing his petition for judicial review of a Board decision denying an unfair representation complaint that he filed against Local 76 under s. 12 of the *Labour Relations Code*, R.S.B.C. 1996, c. 244. The appeal was dismissed. It is unclear to me whether the independence of the Labour Relations Board was raised as an issue in the course of that process (there is no indication of it being raised in this Court's reasons), but that was the context in which to pursue the matter of independence if it was to be pursued, not the breach of contract claim.

[63] As another example, several paragraphs of the appellant's factum are devoted to criticism of this Court's judgment in *Speckling v. Communications, Energy and Paperworkers' Union of Canada, Local 76 et al.*, 2006 BCCA 203, which upheld a Supreme Court judge's decision to dismiss a civil action brought by Bernardus Speckling on the basis that the nature of the claims advanced in that action fell within the exclusive jurisdiction of the Labour Relations Board. Again, the appellant does not explain the legal or factual relevance of that decision to his breach of contract claim, and I see no connection.

[64] I comment on these examples to illustrate that many of the issues the appellant has raised on appeal are not supported by any factual or legal arguments relevant to the claim that was properly before the summary trial judge.

[65] However, as noted, I accept that there are some issues raised in the factum that I consider appropriate to resolve beyond the unsubstantiated assertions of bias.

[66] First, the appellant says the judge erred in law (assessed on a correctness standard), by not allowing him to pursue a breach of contract arising out of the validity of the Overtime Ban. The appellant says the Overtime Ban was not permitted by the Constitution or Local 76's by-laws. He contends the judge had no option but to adjudicate the validity of the Overtime Ban because when this Court remitted the contract claim to the Supreme Court in 2009, it directed the trial court to determine the issue.

[67] Specific to the Overtime Ban, the Court said this in its 2009 decision:

> [7] In 1997, Walter and Ben Speckling were unionized employees at a pulp and paper plant on Vancouver Island. Numerous employees had been laid off by the employer. Based on its interpretation of the collective agreement with the employer, the Union adopted a policy that overtime work was not "necessary" when qualified, laid-off employees were available to work. On April 25, 1997, it issued "Bulletin #2" in which it advised its working members that they were to refuse the employer's overtime requests. The membership approved the overtime policy by a vote taken in October 1997. Walter and Ben Speckling refused to comply with the policy.
>
> …
>
> [58] The same cannot be said, however, with respect to Walter Speckling's claims that the Union acted *ultra vires* its constitution by adopting an overtime policy and imposing a fine on him as a result of his violation of that policy. Those claims require an examination of whether the Union's actions fell outside the scope of its contract with its members, a contractual relationship which is governed by its constitution.
>
> …
>
> [60] The constitutional validity of the respondent unions' actions was not before the LRB during the hearing of Walter Speckling's complaint pursuant to s. 12 of the *Code*. A consideration of whether the conduct of the Union in adopting the overtime policy and in taking disciplinary action against Walter Speckling went beyond the scope of the Union's constitution, thereby amounting to a breach of its contract with one of its members, is an issue distinct from the allegations of tortious misconduct that were the focus of the s. 12 hearing. The essential character of those disputes is different, even though many of the underlying facts giving rise to them are the same.
>
> [61] In his pleading, Walter Speckling sought damages for breach of contract. Broadly stated, this claim relates to his challenge against the constitutional validity of the Union's overtime policy, and against the disciplinary measures imposed by the National Union. I do not agree with the respondents that this is merely a re-characterization of the allegations of tortious misconduct against the Union.
>
> …

> [66] In the result, all of Walter Speckling's claims remain struck as an abuse of process with the exception of his claim for damages for breach of contract in regard to his application for a declaration that: 1) "[the overtime policy] and the Fine Structure are null and void and beyond the constitutional jurisdiction" of the respondent unions; and 2) that he remains a member in good standing of the Union …
>
> [Emphasis added.]

[68] I agree with the respondents that the paragraphs excerpted from the 2009 decision reflect a factual misunderstanding by the Court of the appellant's personal engagement with the Overtime Ban. The Court appears to have been of the mistaken impression that the appellant refused to comply with the Overtime Ban, was disciplined by Local 76 for that refusal, and that his claim for breach of contract arose from the related disciplinary process. The parties agree that the appellant was not disciplined for breaching the Overtime Ban. That was his brother, Bernardus Speckling. See the discussion at paras. 68–71, 73–76 of the summary trial judgment in this case, as well as *Speckling v. Local 76 of Communications, Energy and Paperworkers' Union of Canada*, 2019 BCSC 960.

[69] Given the factual misunderstanding, I do not consider the Court's characterization of the contract claim as "relat[ing] to [the appellant's] challenge against the constitutional validity of the Union's overtime policy" (at para. 61), to in any way have prescriptive force. Instead, all that can reasonably be said about the outcome of the 2009 appeal is that all of the appellant's claims in his 2006 action were affirmed to constitute an abuse of process, except for his claim for damages for breach of contract. The Court's description of the perceived basis for the contract claim was not material to the result of the appeal. This aspect of the appellant's lawsuit survived the Court's abuse of process analysis because its "essential character" (breach of contract), was different in nature from the allegations that underlay the s. 12 complaint that had been advanced before the Labour Relations Board and resolved: at paras. 56–57. The precise bases on which the breach of contract was alleged was not material to the result.

[70] In any event, I am satisfied that when the damages claim was ultimately before the summary trial judge for case management and final determination, she

had independent authority to assess and decide the scope of the litigation based on the appellant's pleadings as they then stood (last amended in 2015), and irrespective of this Court's characterization of the claim several years earlier. "Pleadings are foundational" and "guide the litigation process". For the trial judge, "… pleadings serve the ultimate function of defining the issues of fact and law that will be determined by the court": *Mercantile Office Systems Private Limited v. Worldwide Warranty Life Services Inc.*, 2021 BCCA 362 at paras. 21–23.

[71] After reviewing the appellant's pleadings in the context of all else before her, the judge determined that the discipline process underlying the contract claim involved the prosecution of the counter-charges, which alleged a violation of Article 17.01.16 of the Constitution, not a prosecution for non-compliance with the Overtime Ban, and the validity of the Overtime Ban was therefore irrelevant. In my view, this conclusion was open to her and the appellant has not established a principled basis for appellate interference with the judge's assessment.

[72] He says the judge was wrong to not allow him to challenge the Overtime Ban because a person who is accused of a violation is always entitled to challenge the legality of the relevant "offence" provision (a principle affirmed by the Supreme Court of Canada in *R. v. Big M Drug Mart Ltd.*, [1985] 1 S.C.R. 295, 1985 CanLII 69 at para. 39). I take no issue with that principle, generally. However, it does not assist the appellant because he was not charged with violating the Overtime Ban. He was disciplined for something else.

[73] Nor was his breach of contract claim, as pleaded, actually grounded in the Overtime Ban.

[74] In his November 2015 amended notice of civil claim, the appellant pleaded that Local 76 and the National Union breached the Constitution because: (a) there was no jurisdiction for the counter-charges as those charges were "… never filed with the Local 76 Recording Secretary as required by the Constitution"; (b) only the president of the National Union or the "National Executive Board" had jurisdiction to determine the charges (not a delegate); (c) the Constitution did not allow for the

disciplinary measures imposed on the appellant; (d) neither the Constitution nor Local 76's bylaws authorized a finding that the appellant was not a member of good standing on the basis that he did not pay the $1,000 fine; and (e) the National Union had no jurisdiction to refuse to hear the appellant's appeal from the guilty verdicts on the counter-charges unless he paid the fine.

[75] The Overtime Ban is mentioned in the pleadings, but I agree with the judge (at para. 68 of her reasons), that it is factually pleaded as part of the overarching context and the motivation (or reason) behind the appellant's charges of misappropriation against the Local 76 executive, not as a breach of the Constitution that personally impacted him and, critically, gave rise to damages:

> 2. Local 76 implemented an overtime ban by entertaining "overtime" charges against certain members of Local 76 and which overtime offences did not exist and were not legally enforceable under the Union Constitution or Local 76 Bylaws (the contract).
>
> 3. The [appellant] filed charges against Local and National Executives to stop Local 76 from entertaining the "overtime" charges. This included a charge that the funds of Local 76 were being misappropriated by being used to enforce non-existent overtime offences.
>
> [Emphasis added.]

Accordingly, I see no error in the judge's resolution of this issue.

[76] A second alleged error requiring comment involves the appellant's submission that the judge erred in dismissing his contract claim after finding, as a fact, that the executive of Local 76 did not file their counter-charges with the local union's recording secretary. He says there was "overwhelming evidence" that such was the case, doing so was mandated by the Constitution, and it was unreasonable for the judge to find no breach. Her conclusion that the letter sent to the president of the National Union "charging" the appellant with violating Article 17.01.16 of the Constitution was the document that initiated the counter-charges did not negate or remedy this breach. The appellant spends considerable time in his factum re-visiting the factual matrix surrounding the respondents' processing of the counter-charges and explaining why he says the evidence supported a conclusion different from the one reached by the trial judge.

[77] Respectfully, the appellant's submission on this issue misunderstands the judge's reasoning process, as well as the role of this Court on appeal.

[78] Based on her interpretation of the Constitution, the judge decided that the provision relied upon by the appellant in support of this alleged breach did not apply: at para. 110. As such, even "assuming" the counter-charges were not "filed" with the recording secretary within the meaning of Article 17.03.04, it mattered not: at para. 107. Local 76 cannot be held contractually liable for non-compliance with a term of the Constitution that was not mandatory on the facts.

[79] Furthermore, the judge found that initiating the counter-charges through a letter to the president of the National Union was not prohibited by the Constitution in the exceptional circumstances of this case. In other words, the process that was followed by the executive of Local 76 was permitted: at paras. 108, 117. The judge also found, as a fact, that the appellant received notice of the counter-charges and "actively participated in the processes for dealing with them": at para. 109. As such, the process followed by Local 76 did not cause procedural unfairness.

[80] These were findings for the judge to make as the trier of fact and it is not the role of this Court to reinterpret the Constitution in the absence of an extricable error of law (which the appellant has not established), reweigh the evidence, make its own findings, and substitute its view of the case for that of the summary trial judge: *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53 at paras. 50, 53; *Li v. Li*, 2021 BCCA 39 at para. 32.

[81] A deferential standard of review applies and the appellant has not established reversible error on this second issue.

[82] Finally, a third alleged error warranting comment is the appellant's submission that the judge erred in not finding a breach of contract on the basis that one or more of the documents relevant to the processing of the counter-charges were forged. In his factum, the appellant says the September 15, 1999 date on the letter sent by the executive to the recording secretary advising of the counter-charges was "forged *ex*

post facto". Furthermore, he says the stamp indicating that this letter was "received" on September 15, 1999 was forged. Finally, the appellant says that one of the signature pages attached to the letter was forged.

[83] The appellant made these submissions at the trial. He took the judge through the evidence that he says supports his theory. However, the judge found as a fact that the September 15, 1999 letter to the recording secretary was prepared and delivered on that date: at para. 98. This was a finding for the judge to make in the context of the evidence as a whole and this Court is obliged to show it deference in the absence of palpable and overriding error. The appellant has not established that the judge misapprehended the evidentiary record or failed to consider one or more parts of it. He simply does not accept the judge's assessment of the evidence and the inferences she drew from it. That is not palpable and overriding error. As to the fact that one signature page was used for two purposes (conceded by Local 76), I agree with the judge that this does not amount to a forgery. A forged document is a false document. No one is suggesting that the documents sent to the recording secretary and the president of the National Union falsely represented an intention by the executive of Local 76 to proceed with counter-charges in response to the appellant's accusation that they had violated the Constitution by misappropriating funds in support of enforcing the Overtime Ban.

[84] The appellate standard of review weighs against the appellant on this third issue, and I see no basis for finding reversible error.

Special costs

[85] I have found no error in the judge's determination of the merits of the contract claim. That determination was fatal to the appellant's lawsuit and the judge was obliged to dismiss it. The absence of reversible error means the summary trial judgment cannot be set aside and the respondents have succeeded in the appeal. Each of them seeks an order for special costs.

[86] Special costs are available under this Court's R. 71 and warranted where a party has engaged in reprehensible conduct deserving of rebuke: *Garcia v.*

Crestbrook Forest Industries Ltd. (1994), 9 B.C.L.R. (3d) 242, 1994 CanLII 2570 (C.A.) at para. 17. Special costs have been granted in cases where a party makes flagrant and unfounded personal allegations against lawyers representing the other side or adjudicators who have determined an issue against them. See, for example, *M.Y. Sundae Inc. v. International Dairy Queen, Inc.*, 2018 BCCA 427 at paras. 28–30; *Njoroge v. Canadian Union of Public Employees, Local 15*, 2021 BCCA 435; leave ref'd, 2022 CanLII 38794 (SCC).

[87] In my view, the appellant's conduct easily meets this test. Rather than identify specific errors of law or palpable and overriding errors of fact and develop those errors for purposes of challenging the summary trial judgment, the appellant elected to proceed with his appeal on the basis of wholly unsupported allegations of bias and corruption, and allege that practically everyone other than himself or his brother who have had involvement in the circumstances leading to this litigation is biased—including executive members of Local 76 and the National Union, the Labour Relations Board, legal counsel for the respondents, prior administrative and judicial adjudicators, the summary trial judge, this Court, and the court system, generally.

[88] These allegations find no supporting evidentiary foundation. Rather, as noted, it is plain from the appellant's written material, the oral submissions made on his behalf at the hearing of the appeal, and the summary trial judgment, that he is prone to alleging bias whenever someone does not agree with him and view the case the same way. See also para. 22 of this Court's decision in 2007 BCCA 153. It appears that from the appellant's perspective, a position taken in opposition to him, or a ruling that goes against him, can only be explained by bias. He has alleged bias and corruption without compunction (including conspiracy, fabrication, *Criminal Code* violations, and intentional cover-ups), despite warnings of the potential consequences of doing so. See, for example, *Speckling v. Local 76 of the Communications, Energy and Paperworkers' Union of* Canada, 2024 BCCA 340 at paras. 6–7 (Chambers). His representative in the appeal, Bernardus Speckling, has a history of doing the same. See, for example, *Speckling v. Kearney*, 2007 BCCA 145 at para. 2.

[89] Special costs are necessary to rebuke this litigation approach and to make it clear to others who may be like-minded that advancing bald and unfounded assertions of bias or corruption will attract punitive costs. As stated by the Supreme Court of Canada in *Wewaykum*, allegations of judicial bias are "most serious" because they call "… into question the impartiality of the Court and its members and [raise] doubt on the public's perception of the Court's ability to render justice according to law": at para. 2. When those allegations are spurious, as they are here, this Court must not countenance the behaviour.

Disposition

[90] For the reasons provided, I would dismiss the appeal.

[91] I would also order that the appellant pay each of the respondents their costs of the appeal, to be assessed as special costs.

"The Honourable Madam Justice DeWitt-Van Oosten"

I AGREE:

"The Honourable Mr. Justice Willcock"

I AGREE:

"The Honourable Justice Donegan"